Filed 2/24/12 La Mirada Ave. Neighborhood Assn. v. City of Los Angeles CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD et al.,<br><br>Petitioners and Appellants,<br><br>v.<br><br>CITY OF LOS ANGELES et al.,<br><br>Respondents. | B229517<br><br>(Los Angeles County Super. Ct. No. BS122662) |

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

The Silverstein Law Firm and Robert P. Silverstein; The Law Offices of David Lawrence Bell and David Lawrence Bell for Petitioners and Appellants.

Carmen A. Trutanich, Los Angeles City Attorney, Terry Kaufmann Macias, Colleen Courtney and Charles D. Sewell, Deputy City Attorneys, for Respondents.

## INTRODUCTION

Petitioners and appellants La Mirada Neighborhood Association of Hollywood and Gary Slossberg appeal from the trial court's denial of their petition for writ of mandate and complaint for declaratory relief and injunctive relief brought against the City of Los Angeles (the City) challenging the meeting agendas published by the City's Area Planning Commissions (APC's). Petitioners contend that the use of the phrase "Public Hearing Completed" on the meeting agendas with respect to particular items violates the Ralph M. Brown Act (Gov. Code, § 54950 et seq. (the Brown Act))[1] because it misleads members of the public into believing that they have no right to speak at the meetings regarding those items. Viewing the agenda as a whole, we conclude that reasonable members of the public are not likely to be misled by the phrase. We find no violation of the Brown Act and thus affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

Target Corporation filed an application with the City regarding a proposal to build a 192,680 square foot retail shopping center (the Target Project). Under the Los Angeles Municipal Code (LAMC), the application required a public hearing at which evidence would be taken. (LAMC §§ 11.5.7(F)(1), 12.24(D). Pursuant to LAMC section 12.24(D), the Central APC delegated these hearing requirements to hearing officer Lynda Smith, who conducted a public hearing on April 10, 2009. Seven people attended and six of them testified, including at least one member of the La Mirada Neighborhood Association who testified in opposition to the Target Project. Smith then prepared a staff report containing her findings, recommendations, and a summary of the public hearing.

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[1] All undesignated code sections herein refer to the California Government Code.

The Target Project was scheduled to be considered by the Central APC at its regular meeting on June 23, 2009. Pursuant to section 54954.2, which requires that an agenda be posted in advance for all such meetings and that it contain a "brief general description of each item of business to be transacted or discussed at the meeting" (§ 54954.2, subd. (a)(1)), an agenda was posted for the June 23, 2009 meeting listing eight topics. On the first page, the agenda stated in bold capital letters that "every person wishing to address the Commission must complete a speaker's request form at the meeting and submit it to the Commission executive assistant." The last item on the agenda, Item number nine, referred to a "Public Comment Period" and invited the public to speak on any "items of interest to the public that are within the subject matter jurisdiction of the Area Planning Commission."

Item number five on the agenda described the Target Project as involving "[c]onstruction of a 192,680 net square foot retail shopping center . . . which would include a 162,415 square foot Target store, 26,600 square feet of retail and food uses, and 3,665 square feet of associated uses." Under this item, a heading in bold capital letters read "Public Hearing Completed." The phrase was intended to alert APC members that a public hearing notice had gone out with respect to the agenda item and a public hearing with an opportunity for public testimony already had been conducted by a hearing officer.

Other items on the agenda included the heading "Public Hearing Required." This phrase signified that the APC needed to conduct a public hearing pursuant to the full LAMC requirements for taking evidence and testimony. Related to such agenda items, the first page of the agenda states: "Pursuant to the Commission's general operating procedures, the Commission at times must necessarily limit the

speaking times of those presenting testimony on either side of an issue that is designated as a public hearing item. All requests to address the Commission on public hearing items must be submitted prior to the Commission's consideration of the item."

At the June 23, 2009 meeting, nine people, including at least one member of the La Mirada Neighborhood Association, addressed the Central APC in support of or in opposition to the Target Project. Following the meeting, the Central APC approved the project with several modifications.

Pursuant to section 54960.1, subdivision (b), petitioners demanded in writing that the Central APC rescind the approvals of the Target Project and correct the allegedly misleading use of the phrase "Public Hearing Completed" in the agenda. The City Attorney responded that the City would not correct or cure its actions.

On September 3, 2009, petitioners filed a petition for writ of mandate and complaint for declaratory and injunctive relief. In support of their petition they alleged that Slossberg, one of the members of the La Mirada Neighborhood Association, did not attend the June 23, 2009 hearing but would have attended and voiced his opposition to the Target Project had he not been misled by the language stating "Public Hearing Completed" under the description of the Target Project agenda item on the June 23, 2009 meeting agenda. Petitioners submitted other agendas of APC meetings that use the same or substantially the same language as the June 23, 2009 agenda, including the phrase "Public Hearing Completed" under particular agenda items and the general references to the public's right to speak on matters within the jurisdiction of the APC. They alleged that the City's recurring use of the phrase "Public Hearing Completed" discourages public participation at APC meetings. The writ petition alleged two causes of action under the Brown Act: the first sought to nullify all approvals of the Target Project based on the

allegedly misleading June 23, 2009 meeting agenda, and the second sought declaratory and injunctive relief prohibiting the City from including similarly misleading language in future agendas for APC meetings.

After the petition was filed, the project developer withdrew the Target Project from consideration, rendering the first cause of action moot. Thus, the only remaining claim concerned declaratory and injunctive relief with respect to the language used in agendas for future APC meetings.

At a hearing conducted on September 28, 2010, the court concluded that the contention that the June 23, 2009 agenda was subject to misinterpretation was not persuasive in the absence of evidence that anyone but Slossberg was misled by the agenda and in the face of evidence that approximately 10 other people attended the June 23, 2009 meeting and spoke regarding the Target Project. The court denied the petition and entered judgment in favor of the City. This timely appeal followed.

## DISCUSSION

Petitioners contend the trial court erred in dismissing their claim for declaratory and injunctive relief to prevent the City from using the phrase "Public Hearing Completed" in its future agendas for regular APC meetings. Where the facts are undisputed and the issue involves statutory interpretation, we exercise our independent judgment and review the matter de novo. (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1104.) "[W]e must construe . . . the provisions calling for open meetings and public participation broadly to effectuate the important purposes of the Brown Act." (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1080 (*Galbiso*).)

"[T]he purpose of the Brown Act is to ensure openness in decisionmaking by public agencies and facilitate public participation in the decisionmaking

process." (*Service Employees Internat. Union, Local 99 v. Options—A Child Care & Human Services Agency* (2011) 200 Cal.App.4th 869, 877 (*Local 99*); see § 54950.) The Brown Act permits any interested person to "commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body[2] of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body." (§ 54960, subd. (a).) Thus, even after the writ petition seeking to nullify all approvals of the Target Project was rendered moot by the withdrawal of the application for the project, petitioners were still entitled to seek declaratory and injunctive relief prohibiting the City from violating the Brown Act in agendas for future APC meetings. (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 522.)

*The APC Agendas Comply with Section 54954.3*

Petitioners contend that the agendas for the APC regular meetings routinely violate section 54954.3, which provides that "[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body." (§ 54954.3, subd. (a); see *Galbiso, supra*, 167 Cal.App.4th at p. 1079.) Although petitioners do not dispute that members of the public are in fact permitted to comment on all such matters at APC meetings, they argue that the language used in the agendas leads the public to the erroneous

[2] It is undisputed that the APC is a "legislative body," as defined in the act. (§ 54952; see *Local 99, supra*, 200 Cal.App.4th at p. 883.)

conclusion that they will not have an opportunity to speak on particular issues. We respectfully disagree with petitioners.

We conclude that the APC meeting agendas in the record before us adequately disclose that members of the public have a right to speak at the meetings about any subject that falls within the jurisdiction of the APC. The first page of each of the agendas in question states in bold capital letters that "every person wishing to address the Commission must complete a speaker's request form." Further, each agenda contains a section entitled "Public Comment Period" indicating that the APC shall provide an opportunity for the public to address it on items that are within the subject matter jurisdiction of the APC.

Given these multiple invitations for public comment, the additional phrase "Public Hearing Completed" included under certain agenda items does not reasonably lead members of the public to believe that they will have no opportunity to speak regarding these items. Petitioners are correct that average members of the public will not necessarily understand that the phrase "Public Hearing Completed" is meant to signal to the APC members that the requirement of a public hearing under the LAMC has already been satisfied and thus they need not take evidence at the hearing. However, given the other language in the agendas promising the public the right to speak, we do not believe that the public reasonably would construe the phrase to mean that no opportunity for public comment will be afforded on those subjects that include the phrase "Public Hearing Completed." Nor do we find anything misleading about the language in the agendas stating that the APC may limit the speaking times of those presenting testimony for items that are specifically designated as "public hearing items." Contrary to petitioners' contention, such statements do not reasonably suggest that *no* public testimony will be allowed on items *not* designated as "public hearing items."

"[W]e will affirm a judgment correct on any legal basis, even if that basis was not invoked by the trial court. [Citation.] There can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 269.) Because we conclude based on our independent judgment that the APC meeting agendas were not misleading and that the trial court correctly entered judgment in the City's favor, we need not consider petitioners' contention that the court committed error by allegedly failing to consider whether the APC agendas were objectively misleading and instead focused solely on whether anyone was actually misled by the agenda for the June 23, 2009 regular meeting of the Central APC.

*The Agendas Do Not Violate Section 54954.2*

Petitioners also seem to suggest that, by incorporating "cryptic, confusing, and misleading" language stating that public hearings have been completed on particular agenda items, the agendas violate another provision of the Brown Act, section 54954.2, which provides that "[a]t least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a *brief general description* of each item of business to be transacted or discussed at the meeting." (§ 54954.2, subd. (a)(1), italics added.)

Petitioners provide no authority for the proposition that a legislative body violates this provision of the Brown Act by including language in a meeting agenda that obscures the public's understanding of their right to comment at the meeting. Moreover, we have already concluded above that the agendas in question were not misleading in this regard. Thus, section 54954.2 has no application here.

The two cases cited by petitioner, *Moreno v. City of King* (2005) 127 Cal.App.4th 17 (*Moreno*) and *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196 (*Carlson*), do not support their argument. In *Moreno*, a city

employee alleged Brown Act violations after the city council held a special meeting at which he was not present and decided to fire him. The agenda for the meeting listed the following topic: "'Per Government Code Section 54957: Public Employee (employment contract).'" (*Moreno, supra*, 127 Cal.App.4th at p. 21.) The Court of Appeal determined that "[t]he agenda's description provided no clue that the dismissal of a public employee would be discussed at the meeting," and thus it failed to provide a "brief general description" of the action to be taken at the meeting as required by the requirement of section 54954.2. (*Id.* at p. 27.)

*Carlson* does not even concern the Brown Act. Rather, it deals with the requirement of Education Code section 966, subdivision (b), that an agenda be posted for all school board meetings. (*Carlson, supra*, 18 Cal.App.3d at p. 199.) The plaintiff complained that the school board had voted to close an elementary school without providing notice via the meeting agenda that it was considering such action. The Court of Appeal agreed with the plaintiff, holding that "adequate notice is a requisite. In the instant case, the school board's agenda contained as one item the language 'Continuation school site change.' This was entirely inadequate notice to a citizenry which may have been concerned over a school *closure*. [¶] . . . [T]he agenda item, though not deceitful, was entirely misleading and inadequate to show the whole scope of the board's intended plans." (*Id.* at p. 200.)

Both *Moreno* and *Carlson* take issue with inadequate descriptions on meeting agendas of the matter to be discussed; neither concern language in an agenda that is alleged to obscure the public's right to comment at the meetings. They are therefore inapposite to petitioners' claims here.

*Reliance on APC Internal Rules Does Not Aid Petitioners' Claims*

Lastly, petitioners rely on allegedly flawed Central APC Rules and Operative Procedures providing that "[w]ith respect to matters on which prior public hearings have been held, the regular public meeting of the Commission shall be for decision only, however, an opportunity for public comment *may* be provided." Petitioners correctly note that, pursuant to section 54954.3, subdivision (a), the APC does not have any discretion with respect to permitting public comment; rather, it *must* provide members of the public an opportunity to speak during its regular meetings. (§ 54954.3, subd. (a).) Petitioners suggest that these rules and operating procedures compound the confusion caused by the agendas.

A Brown Act violation cannot be premised on these internal rules and operating procedures. Even if these guidelines misstate the applicable Brown Act requirements, petitioners have presented no evidence that members of the public have ever been denied the right to speak at APC regular meetings or that there is a threat that they will be denied this right in the future. And as discussed above, the APC agendas sufficiently disclose such a right to comment. Thus, reliance on these APC rules does not aid petitioners' claims.

## DISPOSITION

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.